

## REMARKS

In the Office Action mailed December 24, 2003, claims 1-19 were rejected under 35 USC §103 in view of Fiedelson (USP 6,345,261) in view of Basch (USP 6,658,393). Applicant respectfully responds to the Office Action by pointing out claimed features that are not fairly taught or suggested by the references.

### Prior Art Rejections

Under the Graham test, three factors must be evaluated: the scope and content of the prior art; the differences between the prior art and the claimed invention; and the level or ordinary skill in the art. (MPEP 706 and 2141 et seq.). Further, to support a rejection under §103, the references must suggest the desirability of the claimed invention. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. (MPEP 2143.01).

#### A. The Invention

The invention is directed to a computerized exchange system that provides a basis of striking contract obligations including performance obligations and payment obligations. In one aspect, the invention includes a technique for marketing services to potential buyers and requirements to potential sellers. The invention provides a technique for the buyers and sellers to strike contract obligations and exchange those obligations in an orderly manner. In one aspect, the invention includes a multi-stage deliverable and payment schedule.

#### B. Fiedelson

Fiedelson is directed to a customer loyalty investment program. Fiedelson states that his “invention offers members shares in an investment fund as an award for purchasing products or services from participating merchants who have agreed to provide predetermined rebates for such purchases.” (col. 4 lines 39-42, cited by Examiner). Fiedelson emphasizes that the investment fund is diversified because of the large member pool, which leads to an attractive participation by the members. Moreover, Fiedelson indicates that the administrator negotiates on behalf of the membership pool (col. 7 lines 12-33).

This is completely different than the presently claimed invention, which is directed to a buyer and seller negotiation along with a deliverables and payment plan.

The Examiner admits that Fiedelson “fails to explicitly disclose e payment or multi-stage payment plan.” Applicant strenuously argues that Fiedelson does not teach or suggest any type of payment and deliverable plan as required by the pending claims. Moreover, Fieldenson does not suggest that any such plan would be desirable.

C. Basch

Basch is directed to financial risk prediction systems and methods therefore. Basch describes predicting financial risk by receiving data inputs and comparing those inputs to historical data associated with an account owner.

Basch does not teach or suggest a bargaining between a buyer and seller to reach an agreed upon exchange of obligations, and then to carry out the performance of those obligations using a computer and escrow account to track the progress thereof. Moreover, Basch does not suggest that any such negotiation or plan would be desirable.

D. No Suggestion to Combine the References to Create the Claimed Invention

The Fiedelson reference and Basch references do not offer any suggestion for combination. Fiedelson is directed to a customer loyalty program, while Basch is directed to a risk management program. There is simply no suggestion in these references to combine them. Further, there is no suggestion that a forced combination of the references would result in the claimed invention. These are required elements for the references to serve as §103 rejections. (MPEP 2143.01). Consequently, Applicant requests that the Examiner reconsider and withdraw the rejections as described below with respect to the pending claims.

Claims 1-3

Claims 1-5 are directed to a method of establishing a contract and exchanging payments between a buyer and a seller. Claim 1 recites the method as follows:

*the buyer and seller agreeing on a contract specifying terms and conditions;*

*the buyer and seller agreeing on a multi-stage payment plan;*

*the buyer depositing a payment in an escrow account representing a first payment of the multi-stage payment plan;*

*the seller withdrawing from the escrow account the first payment of the multi-stage payment plan;*

*at a later time according to the multi-stage payment plan, the buyer depositing a payment in the escrow account representing a second payment of the multi-stage payment plan; and*

*the seller withdrawing from the escrow account the second payment of the multi-stage payment plan.*

The agreement and multi-stage payment plan are important since they provide comfort for the buyer confident in knowing that the payment according to the plan may be for only a portion of the agreement. Consequently, the amount that the buyer could forfeit if the agreement is not performed by the seller is limited.

Fiedelson and Basch do not teach or suggest such a technique as set forth in claims 1-3. Moreover, skill in the art does not supply the deficiencies between the references and the claim invention. Consequently, Applicant requests that the Examiner reconsider and withdraw the rejection of claims 1-3.

#### Claims 4-11

Claims 4-11 are directed to a method of establishing a contract and exchanging services between a buyer and a seller. Claim 4 recites the method as follows:

*a first party posting a message identifying one of a need and offer for a license; a second party reviewing the message and responding to the message regarding the license;*

*the first party and second party agreeing on a payment plan and deliverable plan, wherein one party is the buyer of the license and the other party is the seller of the license;*

*the buyer depositing an amount of money in an escrow account, according to the agreed upon payment plan; and*

*the seller performing action or refraining from action as required by the license, and when the deliverable is approved by the buyer, receiving from the escrow account the amount of money equal to the agreed upon payment plan.*

The posting of either a need or offer of a license is related to an exchange of some intangible right, for example, a patent license. Like claim 1, the agreement and multi-stage payment plan are important since they provide comfort for the buyer confident in knowing that the payment according

to the plan may be for only a portion of the agreement. Consequently, the amount that the buyer could forfeit if the agreement is not performed by the seller is limited.

Claim 6 further includes, wherein:

*the step of the first party and second party agreeing on a payment plan and deliverable plan includes the step of the first party and second party agreeing on a multi-stage payment plan and respective deliverable plan;*

*the step of the buyer depositing an amount of money in an escrow account is performed according to the agreed upon multi-stage payment plan; and*

*the step of the seller performing the service is performed according to the agreed upon deliverable plan.*

Fiedelson and Basch do not teach or suggest such a technique as set forth in claims 4-11. Moreover, skill in the art does not supply the deficiencies between the references and the claim invention. Consequently, Applicant requests that the Examiner reconsider and withdraw the rejection of claims 4-11.

#### Claims 12-19

Claims 12-19 are directed to an apparatus for establishing a contract and facilitating the exchange of services between a buyer and a seller. Claim 12 recites the apparatus as follows:

*a server including a memory configured to store a plurality of messages posted by first parties identifying one of a need and offer for services, wherein the server is accessible to second parties to review the messages and to respond to the messages and wherein one of the parties is the buyer and another of the parties is the seller;*

*a contract procedure configured to store representations of contract terms agreed to between the buyer and seller, and wherein the memory is configured to store a message agreed to between the buyer and seller representing a payment plan and deliverable plan;*

*an escrow procedure configured to store a monetary representation of a deposit by the buyer equal to an amount of money in an escrow account, according to the agreed upon payment plan; and*

*wherein the escrow procedure includes a release procedure that is configured such that when the deliverable is delivered to and approved by the buyer, the release procedure releases from the escrow account the amount of money equal to the agreed upon payment plan.*

The messages regarding either a need or offer of a service in an important aspect of the claim since the claim also requires that the parties enter into a contract for those services and associated payment plan. Like claim 1, the agreement and payment plan are important since they provide comfort for the buyer confident in knowing that the payment according to the plan may be for only a portion of the agreement. Consequently, the amount that the buyer could forfeit if the agreement is not performed by the seller is protected by the escrow.

Claims 14-19 explicitly require multi-stage aspects of the payment and deliverable plans.

Fiedelson and Basch do not teach or suggest such a technique as set forth in claims 12-19. Moreover, skill in the art does not supply the deficiencies between the references and the claim invention. Consequently, Applicant requests that the Examiner reconsider and withdraw the rejection of claims 12-19.

### Conclusion

For the reasons set forth above, Applicant submits that the pending claims recite subject matter that is not taught or suggested by the references. Accordingly, Applicant requests that the Examiner reconsider and withdraw the rejections, and issue a notice of allowance. If any matters can be resolved by telephone, Applicant requests that the Patent and Trademark Office call the Applicant at the telephone number listed below.

Respectfully submitted,

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